Supreme Court of the United States

.....Term, 1943.

No.

WILLIAM I. BASSETT, also known as William Bassett,
Petitioner,

vs.

MARGARET HELEN BASSETT, *Respondent.*

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF THE COURTS BELOW.

The judgment of the United States District Court for the District of Nevada was filed on September 24, 1943 (R. 115), and is reported in 51 Fed. Supp. 545. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit, reversing the judgment of the District Court, was filed on March 28, 1944 (R. 155), and has not yet appeared in the Advance Sheets. Judgment was entered thereon on March 28, 1944 (R. 158). The Petition for Re-hearing was filed in the Circuit Court on April 28, 1944, and denied on May 5, 1944 (R. 159).

II.

JURISDICTION.

The action was filed in the United States District Court for the District of Nevada on the law side of the Court. Jurisdiction of the District Court was predicated upon diversity of State citizenship and the amount in controversy exceeded, exclusive of interest and costs, the sum or value of Three Thousand ($,000.00) Dollars under Section 24 of the Judicial Code (28 U.S.C.A. 41).

The Circuit Court of Appeals for the Ninth Circuit had jurisdiction of the appeal under Section 128 of the Judicial Code (28 (U.S.C.A. 225).

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals for the Ninth Circuit under the provision of Section 240 of the Judicial Code (28 U.S.C.A. 347).

The order denying petition for re-hearing by the Circuit Court of Appeals was made and entered on May 5, 1944 (R. 159).

The accompanying petition will be filed on or before June 19, 1944, or well within the three months allowed by Section 240 of the Judicial Code just cited.

III.

STATEMENT OF FACTS.

The essential facts of the case at bar have been stated in the accompanying petition for Writ of Certiorari and for brevity are not repeated herein.

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred in each of the following particulars:

1. The Court erred in giving full faith and credit in Nevada to the New York judgment for separation from and after the entry of the decree of divorce in Nevada.

2. The Court erred in not giving full faith and credit to the Nevada judgment and decree in Nevada, made and entered prior to the New York judgments involved herein.

3. The Court erred in ignoring the fact that the remedy was sought in Nevada and that the action was brought in Nevada. That the plea of divorce was a plea to the remedy, and the lex fori should prevail.

4. The Court erred in resolving existing conflict of law in favor of a foreign jurisdiction and not in favor of the local jurisdiction in which the action was tried and in which the trial Federal Court sits.

5. The Court erred in denying the established constitutional and legal right of the State of Nevada to give effect WITHIN ITS OWN BORDERS to a judgment and decree of divorce entered by one of its own courts and faithfully in accordance with its own laws.

6. The Court erred in ignoring the adjudicated construction, interpretation and effect of a Nevada divorce

decree, established by the Court of Last Resort in Nevada, namely, the Supreme Court of Nevada.

7. The Court erred in denying petitioner, an admittedly bona fide resident and citizen of Nevada the right to the protection and enforcement of an unassailed judgment of divorce set up as a defense to an action brought in the jurisdiction in which he lives.

8. The Court erred in violating a legal principle established by this Honorable Court (namely as in Haddock v. Haddock, 201 U. S. 562, and in Williams v. North Carolina, 87 L. Ed. 279), that a state has a right within its borders to give effect to a decree of divorce rendered in favor of the husband within that state "he being at the time when the decree was rendered domiciled in that state."

9. The Court erred in applying the general full faith and credit doctrine to the New York separation judgment without taking into consideration well established exceptions to the rule, namely:

a. That a Court should not extend the operation of the full faith and credit clause beyond its proper function of affording protection to the domestic interests of a State. The opinion of the Court made the full faith and credit clause an instrument for encroachment by New York upon the domestic concerns of Nevada.

b. That a judgment for separate maintenance based

upon the relation of husband and wife may only be enforced while that relation continues.

c. That the New York statute authorizing a suit for separate maintenance, may only be invoked while the relation of husband and wife exists. That this statute must be read into and made a part of the New York judgment.

d. That such a judgment is destroyed by divorce.

e. That such a judgment is destroyed by death of the husband.

f. That such a judgment is destroyed by reconciliation of the parties.

10. The Court erred in assuming jurisdiction to review and set aside in part the judgment and decree of the Nevada State Court, which relieved petitioner from all liability under the New York judgments.

V.

ARGUMENT AND AUTHORITIES IN SUPPORT OF PETITION.

The Divorce Laws and Adjudications of Nevada Are Purely of Domestic Concern, and They May Not Be Violated by Resort to Full Faith and Credit.

"The full faith and credit clause is not an inexorable and unqualified command, but leaves some scope for control by a state within its borders of affairs which are peculiarly its own" (Syllabus, page 5).

Louis H. Pink & Co. v. A.A.A. Highway Express et al, 314 U. S. 201-211, 86 L. Ed. 152.

"Every state has authority under the Constitution to establish laws through its judicial and its legislative arms, which are controlling upon its inhabitants and domestic affairs; and when it is demanded in the domestic forum that the operation of those laws be supplanted by the statute of another state, that forum is not bound, apart from the full faith and credit clause, to yield to the demand, and the law of neither can, by its own force, determine the choice of law for the other." (Syllabus par. 4) Ibid.

"The undue extension of the statutes and authority of a state beyond its own borders by the expedient of rendering a judgment against non-citizens over whose person or property the state has acquired jurisdiction, may infringe due process." (Syllabus par. 8) Ibid.

"In view of the authority which government possesses over the marriage relation, no question can arise on this record concerning the right of the State of Connecticut within its borders to give effect to the decree of divorce rendered in favor of the husband by the courts of Connecticut, he being at the time when the decree was rendered domiciled in that State."

Haddock v. Haddock, 201 U. S. 562, 50 Law Ed. 867, Citation from page 870, and

Williams v. North Carolina, 87 L. Ed. 279, citation from 285.

It is therefore urged here, that by established law:

1. The trial Federal District Court sitting in Nevada

was right in determining that the force and effect of the Nevada divorce decree in Nevada could not be supplanted, under full faith and credit, by the laws or judgments of the State of New York. That the reversal by the Circuit Court of Appeals was wrong.

2. That the State of Nevada had the right within its borders to give effect to the decree of divorce rendered in favor of the husband by the courts of Nevada, he being at the time when the decree was rendered domiciled in that State. That the Circuit Court of Appeals, in ignoring this doctrine and reversing the trial court, was wrong.

Federal Courts Must Follow Conflict of Laws Rules Prevailing in States in Which They Sit.

This principle has been established by this Honorable Court in

Erie R.R. Company v. Tomkins, 304 U. S. 64, 82 L. Ed. 1188;

Klaxon Company v. Stentor Electric Manufacturing Company, Inc., 313 U. S. 487, 85 L. Ed. 1477;

Griffin v. McCoach, 313 U. S. 498, 85 L. Ed. 1481.

The Plea of the Nevada Divorce Is a Plea to the Remedy and the Lex Fori Must Prevail.

This principle has been established by this Honorable Court in

M'Elmoyle v. Cohen, 13 Pet. 312, 10, L. Ed. 177, Citation from 184.

The Decree of Divorce, Having Severed the Marital Tie, Precluded the Respondent From Recovering Any Alleged Arrearages for Maintenance Subsequent to the Making and Entry of Said Decree.

"The dissolution of the marriage relation extinguishes the subject-matter which forms the basis of an action or proceedings for separate maintenance. Bushnell v. Cooper, 289 Ill. 260, 124 N. E. 521, 6 A. L. R. 1517; 30 C. J. 1078."

Herrick v. Herrick, 55 Nev. 59, 25 Pac. (2d) 378.

"The trial court, having found no invalidity in the Nevada divorce decree, properly terminated the allowance to appellant of separate maintenance as of the date that decree was rendered. 1 Cal. Jur. Pg. 1038, Sec. 88; 30 C. J. 1095."

Cardinale v. Cardinale, 68 Pac. (2d) 351 (Cal.).

See also:

Smith v. Superior Court, etc., 68 Pac. 100 (Cal.);

Simpson v. Simpson, 131 Pac. 99;

Chirgwin v. Chirgwin, 79 Pac. (2d) 772 (Cal.);

Harlan v. Harlan, 154 Cal. 341, 98 Pac. 32, 1 Cal. Jur. 1038, Sec. 88;

Harrison & Saunders v. Harrison, 20 Alabama 629, 56 Am. Dec. 227;

McCullough v. McCullough, 168 N.W. 929 (Mich.);

McCormick v. McCormick, 107 Pac. 546 (Kan.);

Hughes v. Hughes, 278 S. W. 121 (Ken.);

Knowlton v. Knowlton, 39 N. E. 595 (Ill.);

Hazard v. Hazard, 197 Ill. App. 612;

Am. Jur., Vol. 17, 481-482, Sec. 626, also page 539, Sec. 710, and page 541, Sec. 715;

Burton v. Burton, 135 N. Y. S. 248;

Tonjes v. Tonjes, 43 N. Y. S. 1028.

If the law of the Williams case (Supra) had been pronounced at the time of the New York proceedings herein, petitioner would have had a complete defense in New York by plea of the Nevada divorce decree. It was a defense denied him in New York because of the mandatory declarations of Haddock v. Haddock, since overruled.

The Circuit Court of Appeals Exceeded Its Jurisdiction in Reviewing and Overruling a Part of a State Divorce Decree.

"The Circuit Courts of Appeals have no jurisdiction to review the judgments of state courts."

36 C. J. S. 218;

34 C. J. 1158, sec. 1640;

Rooker v. Fidelity Trust Co., 68 Law Ed. 362;

Chicago & Alton Railroad Co. v. Wiggins Ferry Co., 27 Law Ed. 636;

The County of Scotland, in the State of Missouri v. William Hill, 33 Law Ed. 261;

Forsythe v. Hammond, 41 Law Ed. 1095;

Lineker v. Marshall et al, 7 Fed. (2d) 875 (9th Circuit);

Lolita Holding Co. v. Aronson & Co. et al, 28 Fed. (2d) 869 (9th Circuit).

The Divorce Policy of Nevada as Established by Its Statutes, Laws and Court Adjudications.

It is the policy in Nevada that if the respondent herein had sued the petitioner in Nevada for separate maintenance, it would have been necessary for her to have established that she was the wife of petitioner.

Nevada Compiled Laws, Vol. IV, Sec. 9468.

It is the further policy that the status of husband and wife must continue in order that the wife may collect maintenance adjudicated.

N. C. L., Vol. IV, Sec. 9468 (Supra), Herrick v. Herrick (Supra).

It is the further policy that the petitioner had the right to establish a domicile in Nevada to entitle him to sue for a divorce, irrespective of the residence and domicile of respondent, and irrespective of where the marital domicile was.

N. C. L. Vol. IV. Sec. 9460, as amended Nevada Statutes pg. 14, A. 1931, pg. 161 and Nev. Stats. 1929, pg. 18;

Walker v. Walker, 45 Nev. 105, 198 Pac. 433;

Lamb v. Lamb (Nev), 65 Pac. (2d) 872.

Worthington v. District Court, 37 Nev. 212-221, 226, 142 Pac. 230.

It is the further policy in Nevada that default divorce decrees properly based upon constructive service of process outside of the State, are as good,legal and valid in Nevada as those based upon personal service of pro-

cess within the State or upon the general appearance of the defendant.

See Nevada Statutes and Authorities above cited.

It is the further policy in Nevada that a divorce decree properly secured by a husband, by default based upon constructive service of process on the wife outside the state, *equally binds the wife. It divorces her as well as him. This is expressly provided by statute.* (Italics supplied.) For facility of examination, this short statute is here quoted:

> "Sec. 28. Whenever a decree of divorce from the bonds of matrimony is granted in this state by a court of competent authority, suche decree shall fully and completely dissolve the marriage contract as to both parties."
>
> *Statutes of Nevada* 1939, Page 19, Sec. 28.

This statute is comprehensive and applies to all divorces properly secured in the State of Nevada, whether by default based upon constructive service of process outside the State, or otherwise.

Nevada courts are empowered in divorce cases to adjudge property rights.

> *N. C. L.* Vol. IV., Sec. 9463 as amended Statutes of Nevada, 1939, page 18, Sec. 25.

It is the further policy in Nevada that a decree of divorce a vinculo is final and that there can be no grant of alimony after such a divorce:

> "There is nothing peculiarly applicable to a di-

vorce proceeding which gives a court jurisdiction to amend or alter a final judgment. A decree a vinculo is final, and the jurisdiction of the court over the parties is after the expiration of the term at an end; and, just as there can be no grant of alimony after such a divorce, so there can be no change in the award of alimony, unless the right to make such a change is reserved by the court in its decree, as it may be, or is given by statute, as it often is. Stewart on Marriage and Divorce, Paragraphs 366, 376. But where there is no such statute (and we have none), and where the decree does not reserve the right to the court (as it does not here) to alter the decree for alimony, no such authority exists. Howell v. Howell, 104 Cal. 45, 37 Pac. 771, 43 Am. St. Rep. 70; Egan v. Egan, 90 Cal. 15, 27 Pac. 22; Rugh, v. Rugh, 97 Wash. 51, 165 Pac. 1063, L. R. A. 1917 F, 721; Kamp v. Kamp, 58 N.Y. 212."

Sweeney v. Sweeney, 42 Nev. 431, 179 Pac. 638, Citation from page 639-640 Pacific.

This Honorable Court referred to this case, and other Nevada cases and applied the law of Nevada in the following language:

"For other purposes, local law determines the status of the parties and their property after a decree dissolving the marital bonds."

Helvering v. Muller, 310 U. S. 73, 84 Law. Ed. 1082, Citation from page 1085.

The Bona Fides of Petitioner's Domicile and Residence in the State of Nevada Has Been Unquestionably Established and Has Not Been Assailed.

(See *Transcript of Record* 110-113.)

Therefore, the divorce decree here being final, bind-

ing upon both parties, ending marital relations as to status and property, and all rights attendant upon or flowing out of such relations, awarding no alimony or maintenance to the former wife, and further, expressly denying alimony, is conclusive. It forecloses further payments by the husband to the wife for any reason or thing or circumstance based upon the status of coverture.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari in this case complies with the requirement of Rule 38 of this Court, that it presents a question of merit which requires adjudication and settlement by this Court, and that the petition for a writ of certiorari should be granted.

Respectfully submitted,

SAMUEL PLATT,
First National Bank Building,
Reno, Nevada,
Counsel for Petitioner.

June 12, 1944.